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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 JAE CHUNG,

15 Plaintiff,

16 v.
17

18 UNITED STATES OF AMERICA,

19 Defendant.

Case No.: 2:23-cv-4270 MRW

United States of America's
Answer

20
21 The United States of America, Defendant, responds to the complaint of
22 Jae Chung, Plaintiff, as follows.

23 1. The United States of America admits that Plaintiff's complaint
24 requests a refund of federal income taxes paid for tax year 2006 and for
25 damages under 26 U.S.C. § 7433. The United States denies that Plaintiff is
26 entitled to recover under either theory and all additional allegations
27 contained in paragraph 1 of Plaintiff's complaint.
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1 2. The United States admits that the Court has jurisdiction under
2 28 U.S.C. § 1346(a)(1) and 26 U.S.C. § 7433 over Plaintiff's refund claim.
3 The United States lacks knowledge or information sufficient to form a belief
4 about the truth of the remaining allegations contained in paragraph 2 of
5 Plaintiff's complaint.

6 3. The United States of America admits the allegations contained in
7 paragraph 3 of Plaintiff's complaint.

8 4. The United States of America admits the allegations contained in
9 paragraph 4 of Plaintiff's complaint.

10 5. The United States of America admits the allegations contained in
11 paragraph 5 of Plaintiff's complaint.

12 6. The United States of America admits the allegations contained in
13 paragraph 6 of Plaintiff's complaint.

14 7. The United States denies the allegations contained in paragraph
15 7 of Plaintiff's complaint. The Government alleges that there have been
16 multiple OVDP programs, and Plaintiff does not specify which program he is
17 referring to.

18 8. The United States admits that on December 15, 2010, Plaintiff
19 executed a closing agreement (form 906) for tax year 2006 whereby Plaintiff
20 agreed to a deficiency in tax of \$1,127,927, penalties of \$225,585.40, and
21 interest of \$296,342.32. The United States denies any allegations contained
22 in paragraph 8 of Plaintiff's complaint that are inconsistent with this
23 admission.

24 9. The United States admits the allegations contained in paragraph
25 9 of Plaintiff's complaint.

26 10. The United States admits that Plaintiff has made payments
27 toward his 2006 tax liability. Because Plaintiff has not provided parameters
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1 to his statement that the payments have been “significant,” the United
2 States denies the remaining allegations contained in paragraph 10.

3 11. Because Plaintiff has not defined what it means by “threatened
4 collection action” nor provided specific dates or actions, the United States
5 lacks knowledge or information sufficient to form a belief about the truth of
6 the allegations contained in paragraph 11 of Plaintiff’s complaint.

7 12. The United States denies the allegations contained in paragraph
8 12 of Plaintiff’s complaint.

9 13. The United States admits the allegations contained in paragraph
10 13 of Plaintiff’s complaint.

11 14. The United States admits that on July 14, 2022, the IRS received
12 \$200,000, which it applied to Plaintiff’s federal income-tax liability for 2006,
13 and that on July 21, 2022, the IRS received \$1,089,316.55, which it applied
14 to Plaintiff’s federal tax liability for 2006. The United States denies the
15 remaining allegations contained in paragraph 14 of Plaintiff’s complaint.

16 15. The United States admits that: (1) 26 U.S.C. § 6402(a) states in
17 part: “In the case of any overpayment, the Secretary, within the applicable
18 period of limitations, ... shall, subject to subsections (c), (d), (e), and (f),
19 refund any balance to such person.”; (2) 26 U.S.C. § 7422(a) states in part:
20 “No suit ... shall be maintained ... for the recovery of any internal revenue
21 tax ... until a claim for refund ... has been duly filed with the Secretary”;
22 and (3) 26 U.S.C. § 6532(a)(1) states in part: “No suit ... under section
23 7422(a) ... shall be begun before the expiration of 6 months from the date of
24 filing the claim required under such section unless the Secretary renders a
25 decision thereon within that time” The United States denies any
26 allegations contained in paragraph 15 of Plaintiff’s complaint that are
27 inconsistent with these admissions or with 26 U.S.C. §§ 6402, 6532, or 7422.

1 16. The United States denies the allegations contained in paragraph
2 16 of Plaintiff's complaint, except admits that Plaintiff filed an amended
3 return on October 24, 2022.

4 17. The United States denies the allegations contained in paragraph
5 17 of Plaintiff's complaint.

6 18. The United States admits that more than six months have passed
7 since the filing of the amended return on October 24, 2022. The United
8 States denies any allegations contained in paragraph 18 that are
9 inconsistent with this admission.

10 19. The United States admits that Plaintiff realleges paragraphs 1
11 through 18, and the United States realleges its responses to those
12 paragraphs.

13 20. The United States admits that 26 U.S.C. § 6502(1)(a)(1) states:
14 "Where the assessment of any tax imposed by this title has been made
15 within the period of limitation properly applicable thereto, such tax may be
16 collected by levy or by a proceeding in court, but only if the levy is made or
17 the proceeding begun — (1) within 10 years after the assessment of the
18 tax[.]" The United States denies any allegations contained in paragraph 20
19 that are inconsistent with this admission or with 26 U.S.C. § 6502.

20 21. The United States admits that 26 U.S.C. § 6502(a)(2) states in
21 part: "Where the assessment of any tax imposed by this title has been made
22 within the period of limitation properly applicable thereto, such tax may be
23 collected by levy or by a proceeding in court, but only if the levy is made or
24 the proceeding begun — (2) if (A) there is an installment agreement between
25 the taxpayer and the Secretary, prior to the date which is 90 days after the
26 expiration of any period for collection agreed upon in writing by the
27 Secretary and the taxpayer at the time the installment agreement was
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1 entered into; or (B) there is a release of levy under section 6343 after such
2 10-year period, prior to the expiration of any period for collection agreed
3 upon in writing by the Secretary and the taxpayer before such release.” The
4 United States denies any allegations contained in paragraph 21 that are
5 inconsistent with this admission or 26 U.S.C. § 6502.

6 22. The United States admits that 26 U.S.C. § 6503 extends the
7 suspension of the running of the limitation period set forth in 26 U.S.C.
8 § 6502 in various circumstances. The United States admits that: (1) 26
9 U.S.C. § 6503(a)(1) states in part: “The running of the period of limitations
10 ... in section 6501 or 6502 on the making of assessments or the collection by
11 levy or a proceeding in court, in respect of any deficiency as defined in
12 section 6211 ..., shall ... be suspended for the period during which the
13 Secretary is prohibited from making the assessment or from collecting by
14 levy or a proceeding in court (and in any event, if a proceeding in respect of
15 the deficiency is placed on the docket of the Tax Court, until the decision of
16 the Tax Court becomes final), and for 60 days thereafter.”; and (2) 26 U.S.C.
17 § 6503(h) states in part: “The running of the period of limitations provided in
18 section 6501 or 6502 ... shall, in a case under title 11 of the United States
19 Code, be suspended for the period during which the Secretary is prohibited
20 by reason of such case from making the assessment or from collecting and ...
21 (2) for collection, six months thereafter.” The United States denies any
22 allegations contained in paragraph 22 that are inconsistent with this
23 admission or with 26 U.S.C. § 6503.

24 23. The United States admits that on September 5, 2011, the Internal
25 Revenue Service assessed \$1,127,927 in federal income tax against Plaintiff
26 for tax year 2006. The United States denies any allegations contained in
27 paragraph 23 that are inconsistent with this admission.

1 24. The United States denies the allegations contained in paragraph
2 24 of Plaintiff's complaint.

3 25. The United States denies the allegations contained in paragraph
4 25 of Plaintiff's complaint.

5 26. The United States denies the allegations contained in paragraph
6 26 of Plaintiff's complaint.

7 27. The United States admits that Plaintiff realleges paragraphs 1
8 through 26, and the United States realleges its responses to those
9 paragraphs.

10 28. The United States admits that 26 U.S.C. § 7433 states, in part:
11 "If, in connection with any collection of Federal tax with respect to a
12 taxpayer, any officer or employee of the Internal Revenue Service recklessly
13 or intentionally, or by reason of negligence, disregards any provision of this
14 title, or any regulation promulgated under this title, such taxpayer may
15 bring a civil action for damages against the United States[.]" The United
16 States denies any allegations contained in paragraph 28 that are
17 inconsistent with this admission or with 26 U.S.C. § 7433.

18 29. The United States lacks knowledge or information sufficient to
19 form a belief about the truth of the allegations contained in paragraph 29 of
20 Plaintiff's complaint.

21 30. The United States lacks knowledge or information sufficient to
22 form a belief about the truth of the allegations contained in paragraph 30 of
23 Plaintiff's complaint.

24 31. The United States denies that it had engaged in "unlawful
25 reckless collection actions" against Plaintiff. The United States lacks
26 knowledge or information sufficient to form a belief about the truth of the
27 remaining allegations contained in paragraph 31 of Plaintiff's complaint.
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1 32. The United States lacks knowledge or information sufficient to
2 form a belief about the truth of the allegations contained in paragraph 32 of
3 Plaintiff's complaint.

4 33. The United States lacks knowledge or information sufficient to
5 form a belief about the truth of the allegations contained in paragraph 33 of
6 Plaintiff's complaint.

7 34. The United States lacks knowledge or information sufficient to
8 form a belief about the truth of the allegations contained in paragraph 34 of
9 Plaintiff's complaint.

10 35. The United States denies the allegations contained in paragraph
11 35 of Plaintiff's complaint.

12 WHEREFORE, the United States of America, Defendant, requests this
13 Court to deny Plaintiff's request for relief and enter judgment in favor of the
14 United States of America and grant it such further relief, including costs, as
15 the Court deems appropriate.

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17 **AFFIRMATIVE DEFENSE**

18 In response to the complaint, the United States of America, Defendant,
19 asserts the following defense:

20 1. The arguments raised in support of Plaintiff's suit for refund may
21 not be at variance with those raised by Plaintiff during the administrative
22 process.

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1 2. The arguments raised in support of Plaintiff's suit for damages
2 under 26 U.S.C. § 7433 may not be at variance with those raised by Plaintiff
3 during the administrative process.
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5 Dated: October 17, 2023

E. MARTIN ESTRADA
United States Attorney
THOMAS D. COKER
Assistant United States Attorney
Chief, Tax Division

9 /s/ Andrew T. Pribe

10 ANDREW T. PRIBE
11 Assistant United States Attorney
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